

Stamps Can Wait; Arbitration Can't: NN Global's Legal Triumph



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Imagine a situation where a major project has just gone off the rails. Deadlines have slipped, invoices are disputed and both sides are pointing fingers at each other. One party, fed up with endless email chains, decides it's time to invoke arbitration after all, the contract clearly has a dispute resolution clause. [1]

But just as things are about to move forward, the other side drops a bombshell:

“The contract isn't stamped.”

Suddenly, the focus shifts from performance obligations to paper formalities. The issue is no longer about breach or delay, it's about whether an unstamped contract can even give effect to an arbitration clause.

A simple objection over a missing stamp duty, transformed what should have been a straightforward commercial dispute into a constitutional-level legal debate. The matter escalated all the way to the Supreme Court, culminating in the 2023 landmark judgment of *N.N. Global Mercantile Pvt. Ltd. v. Indo Unique Flame Ltd. & Ors* [2]

In this case, the Court was asked to decide something that might sound absurd to any non-lawyer's ear:

Does a contract without a stamp mean that its arbitration clause is legally invisible?

The answer, delivered by a seven-judge Constitutional Bench, is a resounding no. The Supreme Court restored balance and sanity by holding that an arbitration agreement within an unstamped or insufficiently stamped contract remains valid and enforceable.

[1] The article reflects the general work of the authors and the views expressed are personal. No reader should act on any statement contained herein without seeking detailed professional advice.

[2] 2023 INSC 1066

The judgment reaffirmed India's pro-arbitration stance, making it clear that business intent cannot be defeated by technical imperfections and that justice, after all, doesn't depend on the thickness of the paper or the stickiness of the stamp.

Background: The Dispute That Sparked the Debate

The case arose from a subcontract between N.N. Global Mercantile Pvt. Ltd. and Indo Unique Flame Ltd., which contained an arbitration clause. When disputes arose, N.N. Global invoked arbitration. However, Indo Unique Flame argued that the subcontract was unstamped under the Indian Stamp Act, 1899, and therefore inadmissible in evidence, including its arbitration clause. The key argument: if the document is void for want of stamping, the arbitration clause inside it cannot survive.

The issue, seemingly procedural, raised a profound legal question: Can an arbitration clause embed in an unstamped or insufficiently stamped agreement be enforced? This question triggered a chain of judgments culminating in a seven-judge bench decision in December 2023, which has now become one of the most important arbitration rulings in India's recent history.

Judicial Journey of N.N. Global

The N.N. Global case took a few twists before reaching final clarity.

Step 1: The 2021 Three-Judge Bench (Pro-Arbitration View)

In *N.N. Global Mercantile Pvt. Ltd. v. Indo Unique Flame Ltd.*^[3], a three-judge bench led by Justice Nariman held that:

- The arbitration agreement is separable and autonomous from the underlying contract.
- Even if the contract is unstamped or voidable, the arbitration clause survives.
- Non-stamping is a curable defect — it does not affect the validity of the arbitration clause.

This view aligned India with international arbitration standards.

[3](2021) 4 SCC 379

Step 2: The 2023 Five-Judge Bench (September 2023) (A Step Backwards)

However, in *N.N. Global Mercantile Pvt. Ltd. v. Indo Unique Flame Ltd*[4], a five-judge bench (3:2 majority) reversed this position.

The majority (Justices K.M. Joseph, Ajay Rastogi, and C.T. Ravikumar) held that:

- An unstamped or insufficiently stamped contract is unenforceable under Section 35 of the Stamp Act.
- Since the arbitration clause is part of that contract, it too becomes unenforceable.
- Therefore, before referring a matter to arbitration under Sections 8 or 11 of the Arbitration Act[5], the court must first ensure the instrument is duly stamped.

The dissent (Justices S. Ravindra Bhat and Hrishikesh Roy) strongly disagreed, warning that such an interpretation would “paralyse the arbitral process” and contradict the legislative intent of minimal court intervention. The ruling was widely criticised by arbitration practitioners and scholars for setting India back on its path toward becoming an arbitration-friendly jurisdiction.

Step 3: The Seven-Judge Constitutional Bench (December 2023) – The Final Word

Recognising the far-reaching consequences, the Supreme Court constituted a seven-judge bench led by the Hon’ble former Chief Justice D.Y. Chandrachud to reconsider the issue.

In a unanimous decision delivered on 13 December 2023, the Court decisively overruled the five-judge majority, restoring the principles laid down in *SMS Tea Estates Pvt. Ltd. v. Chandmari Tea Co.*[6] and *Garware Wall Ropes Ltd. v. Coastal Marine Constructions* [7] to a modern, harmonised standard.

[4] 2023 SCC OnLine SC 495

[5] Arbitration & Conciliation Act, 1996.

[6] (2011) 14 SCC 66

[7] (2019) 10 SCC 456

Key Findings of the Seven-Judge Bench

1. Non-stamping Does Not Invalidate the Arbitration Clause

- The Court held that the absence or deficiency of stamp duty does not render the arbitration agreement void, void ab initio, or non-existent.
- It merely affects admissibility, not enforceability. Once duty and penalty are paid, the document becomes admissible in evidence.

2. Arbitration Clause Is an Independent Contract

- The arbitration clause is separable from the underlying agreement. Even if the main contract is inadmissible, the arbitration clause can survive and be acted upon.

3. Non-stamping Is a Curable Defect

- The defect can be cured by paying the appropriate stamp duty and penalty under the Stamp Act [8]. The law does not intend to invalidate transactions for procedural irregularities that can be corrected.

4. Court's Role at Referral Stage Is Limited

- When a court examines a Section 8 or 11 application [9], it must only verify whether a prima facie arbitration agreement exists, not whether it's stamped.
- Stamping disputes, if raised, are to be addressed by the arbitral tribunal itself under the kompetenz-kompetenz doctrine (Supra)

5. Harmony Between the Stamp Act and Arbitration Act

- The Court harmonised the two statutes, noting that the Stamp Act is primarily a fiscal measure and should not frustrate the substantive right to arbitrate.
- The Arbitration Act, being a special statute, must be given precedence to promote its objectives of efficiency and autonomy.

[8] Indian Stamp Act, 1899

[9] To refer parties to arbitration or appoint an arbitrator

Conclusion:

The N.N. Global ruling is a win for commercial pragmatism, restoring confidence that Indian courts will favor substance over form. By holding that an unstamped or under-stamped contract does not nullify an arbitration clause, the Supreme Court has reaffirmed India's reputation as a forward-looking, business-friendly arbitration hub.



Pro Tip Add-On for Businesses

- Ensure the Agreement is sufficiently stamped.
- In addition to ensuring that an agreement is properly stamped, businesses must also recognize which jurisdiction's Stamp Act applies and this depends on the seat of arbitration.
- When drafting or signing contracts: Confirm the seat or venue of arbitration in advance.
- Check which Stamp Act (and rates) apply for that jurisdiction. For example: If an agreement executed in Delhi names Mumbai (Maharashtra) as the seat of arbitration, the Maharashtra Stamp Act (as amended) will govern the stamping requirements. That means even if the contract was signed in Delhi, parties should ensure compliance with Maharashtra's stamp duty schedule, especially if the arbitration or enforcement is likely to occur there or when the original agreement is brought here.
- Factor in e-stamping portals or procedures available for that specific state.
- Under Indian law, stamp duty is a state subject, and the rate, format, and procedure for stamping can vary across states (for example, Maharashtra, Delhi, Karnataka, and Tamil Nadu have different stamp schedules). Therefore, If the seat of arbitration is in a particular state, that state's stamp law typically governs the admissibility and sufficiency of the instrument for use in arbitration proceedings held there. Even though the substantive contract may have connections to multiple jurisdictions, once the seat is fixed, the procedural law of that seat (including its stamp rules and evidentiary requirements) becomes relevant.
- In international arbitration with a seat in India, the Indian Stamp Act, 1899 and relevant State amendments apply. For a seat outside India, stamping requirements generally depend on where enforcement or execution is sought.

The takeaway for businesses is clear:

- Prevention is better than cure. Staying compliant with stamping rules is far easier and cheaper—than fixing the problem later through penalties or procedural detours. Ultimately, a missing stamp may slow you down, but it can't stop arbitration in its tracks.

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